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PATENT
Customer Number 22,852
Attorney Docket No. 7451.0003-02
InterTrust Ref. No.: IT-9.2 (US)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:)
)
Victor H. SHEAR, et al.) Group Art Unit: 2134
)
Application No.: 09/925,072) Examiner: Gregory Allan Morse
)
Filed: August 6, 2001)
)
For: SYSTEMS AND METHODS FOR)
USING CRYPTOGRAPHY TO)
PROTECT SECURE COMPUTING)
ENVIRONMENTS)

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

SECOND UPDATED NOTICE REGARDING RELATED LITIGATION

Further to the submission of the Updated Notice Regarding Related Litigation on April 3, 2003, Applicants submit this Second Updated Notice to inform the Examiner of the status of the ongoing litigation between InterTrust and Microsoft, captioned InterTrust Tech. Corp. v. Microsoft Corp. (C 01-1640 SBA, N. D. Ca.). Applicants also submit copies of papers exchanged by the parties in the course of this litigation. Many of these papers relate to claim construction.

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STATUS OF RELATED LITIGATION

On March 14, 2003, the parties filed a revised Joint Claim Construction and Prehearing Statement, which includes Exhibits A-I. See Exhibit 1.

On April 7, 2003, InterTrust filed a Memorandum of Points and Authorities of Plaintiff InterTrust Technologies in Opposition to Microsoft Motion for Summary Judgment on Indefiniteness and in support of Cross-Motion for Summary Judgment. See Exhibit 2. Also on April 7, 2003, Microsoft filed its Markman Brief. See Exhibit 3.

On April 21, 2003, InterTrust filed its Reply Memorandum on Claim Construction. See Exhibit 4. Also on April 21, 2003, Microsoft filed a Reply to InterTrust's Opposition to Microsoft's Brief in Support of Motion for Summary Judgment That Certain "Mini-Markman" Claims are Invalid for Indefiniteness. See Exhibit 5.

On July 3, 2003, Judge Sandra Brown Armstrong issued an Order Denying Motion for Partial Summary Judgment and Construing "Mini-Markman" Claims. See Exhibit 6.

REMARKS

Applicants submit this Second Updated Notice Regarding Related Litigation, as well as the previous two Notices Regarding Related Litigation, in fulfillment of their duty to disclose information material to patentability under 37 CFR 1.56.

Applicants encourage the Examiner to read the attached documents, particularly the Court's July 3, 2003 Order. Applicants wish to point out that, in the Order dated July 3, 2003, Judge Armstrong denied Microsoft's Motion for Summary Judgment, also referred to in the Order as the "Indefiniteness Motion." Ex. 6 at 1. Microsoft had argued

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that InterTrust claims that use the terms "secure," "protected processing environment," or "host processing environment" were invalid as indefinite. *Id.* at 4-5.

The Court also construed several terms and phrases at issue in the litigation, including: (1) aspect; (2) authentication; (3) clearinghouse; (4) compares; (5) derive; (6) designating; (7) device class; (8) digital signature / digital signing; (9) digitally signing a second load module with a second digital signature different from the first digital signature, the second digital signature designating the second load module for use by a second device class having at least one of tamper resistance and security level different from the at least one of tamper resistance and security level of the first device class; (10) executable programming / executable; (11) identifying at least one aspect of an execution space required for use and/or execution of the load module; (12) Virtual Distribution Environment (VDE); (13) budget; (14) a budget specifying the number of copies which can be made of said digital file; (15) component assembly; (16) contain; (17) control; (18) controlling; (19) controlling the copies made of said digital file; (20) copy, copied, copying; (21) derives information from one or more aspects of said host processing environment; (22) Host Processing Environment (HPE); (23) identifier; (24) Protected Processing Environment (PPE); (25) secure, securely; (26) secure container; (27) securely applying, at said first appliance through use of said at least one resource said first entity's control and said second entity's control to govern use of said data item; (28) tamper resistance; (29) tamper resistant barrier; and (30) use. For the Court's construction of these terms, the Examiner is directed to pages 21-55 of the Order.

Applicants wish to point out that with regard to most, if not all, construed claim terms, the Court adopted constructions substantially similar to those proposed by InterTrust.

But again, Applicants encourage the Examiner to confirm for himself the Court's construction of these and other terms.

With this Notice, Applicants have provided copies of some of the exhibits referred to in the provided papers. However, due to the voluminous number of documents referred to by these and previously provided papers, all attachments and exhibits have not been provided. If the Examiner believes a reference or a document not yet submitted may be helpful in resolving an issue before him and would like to review that or any other document, Applicants invite the Examiner to contact the undersigned at (650) 849-6643.

If there are any fees due with the filing of this Notice which have not yet been paid, please charge the fees to our Deposit Account No. 06-0916.

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, L.L.P.

Dated: July 31, 2003

By: 

Karna J. Nisewaner
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